IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
Criminal Writ Petition No.2004 of 2006

Mr.Dattatraya Mahadeo Sukthankar
& anr. Petitioners

Vs.

Mr.Prakash Dasharathrao Wagaskar
& anr. Respondents

Mr.R.D.Soni i/b. M/s.Khaitan & Jayakar for petitioners.

Mr.Subodh Desai with Ms.P.L.Bachani i/b. M/s. I.R. Joshi & Co. for Resp.no.1.

Mr.P.A.Pol, APP for State.

CORAM: B.H.MARLAPALLE, J.

November 1, 2007.

ORAL ORDER:

1. Heard Mr.Soni, the learned counsel for the petitioners.

2. Rule. Respondents waive service. By consent Rule is made returnable forthwith.

3. This petition filed under Article 227 of the Constitution read with Section 482 of Cr.P.C. impugns the order passed by the learned Addl. Sessions Judge at Nashik dismissing the application

for condonation of delay and registered as Criminal Misc. Application NO.138 of 2006.

4. The present Respondent No.1 was one of the Trustees of Shri Sai Baba Sansthan, Shirdi when he filed Criminal Case No.1636 of 2002 for the offence punishable under Section 500 read with Section 34 of IPC against the present petitioners. As per the complainant periodical magazine published by the Sansthan and by name "Shri Sai Leela" which has a wide circulation of about 40,000 copies, in its Guru Purnima Visheshank (Special Issue) allegedly published various points raised by the complainant in his complaint filed before the Charity Commissioner and as per him this publication was nothing short of defaming him. The complainant claims that he being a well-known personality - as an industrialist and leading businessman in Nashik city and having been associated with three hatcheries and two other private limited companies as the Managing Director, his reputation in the society and as Trustee of Shri Sai Sansthan was damaged and the remarks published against him in the said magazine have ridiculed him to a great extent before the society. This complaint was filed before the learned Judicial Magistrate at

Nashik where the complainant resides and the order of issuance of process was passed on 26/2/2003. The said order was initially prayed to be recalled by filing an application but on account of the decision of the Apex Court in the case of Adalat Prasad Vs. Rooplal Jindal & ors. **[(2004) 7 SCC 338]**, the said application was withdrawn. The accused, therefore, filed a criminal revision application under Section 397 of Cr.P.C. before the Sessions Court on or about 27/9/2005. It appears that they subsequently realised that the criminal revision application was filed belatedly and, therefore, Criminal Misc. Application No.138 of 2006 was filed on or about 23rd February 2006 for condonation of delay and as noted earlier, the same has been dismissed by the impugned order.

5. A short question that arises for consideration in this petition is whether the learned Addl. Sessions Judge committed any error apparent on the face of the record in rejecting the application for condonation of delay and whether it failed to prevent abuse of the process of any Court or otherwise to secure the ends of justice

6. As noted earlier, the order of issuance of process is dated 26/2/2003. The record further shows that on 3/1/2004 the present petitioners preferred an application before the learned Judicial Magistrate, First Class at Nashik for recalling the process issued by him and while this application was pending the above referred judgment in the case of Adalat Prasad (Supra) was rendered by the Apex Court holding that the Judicial Magistrate, First Class does not have powers to recall the order of issuance of process and the remedy for the accused for the same lies before the Revision Court. There is no dispute between the parties that the said judgment was published sometimes in the month of October 2004. On 19/8/2005 the petitioners filed a purshis before the learned Judicial Magistrate, First Class for disposal of the application as not pressed for and more so because it was not maintainable in view of the law laid down in Adalat Prasad's case (Supra) and the said application was disposed as withdrawn on that date. On 27/9/2005 or thereabout the revision application under Section 397 of Cr.P.C. was filed but belatedly.

7. The learned Addl. Sessions Judge observed

that there was no statement made by the applicants that they were bona fide prosecuting the application pending before the learned Magistrate, the judgment in the case of Adalat Prasad was published in the month of October 2004 but the application was withdrawn only on 19/8/2005. The revision application was filed in September 2005 but along with the same a separate application for condonation of delay was not filed and such a step was taken only in February 2006. The learned addl. Sessions Judge also proceeded to consider the revision application on merits and observed,

> "Seeing the nature of the allegations of the complaint made against the applicant, it would be desirable that the matter before the Magistrate takes its full course and both the parties should get opportunity to justify their stand...."

8. The entire approach of the learned Addl. Sessions Judge appears to be hyper technical. Nothing stopped the learned Judicial Magistrate, First Class from dismissing the petitioners'

application as not maintainable after the judgment in Adalat Prasad's case was rendered and at the same time even the complainant was at liberty to press before the learned Magistrate that the application was required to be dismissed on account of the law laid down in the said case. Just because the petitioners' withdrew the application on 19/8/2005, that itself cannot be a reason to hold that they were negligent, casual or otherwise acted deliberately to keep the application pending. Even otherwise the accused no.1 is the Chairman of the Trust and accused no.2 is the Editor of the Magazine named Shri Sai Leela and the complaint does not indicate any personal grudge or animosity. However, after the application was withdrawn on 19/8/2005, the petitioners filed a revision application within about a month's time and if the application for condonation of delay was not filed with the same, perhaps the cause was the ill advice of the Advocate concerned. I am, therefore, satisfied that the revision filed by the accused was required to be decided on merits rather than throwing it away on the ground of delay, having regards to the averments made in the complaint. The approach of the learned Addl. Sessions Judge does not meet the requirements of law

while considering an application for condonation of delay and the delay caused could not be said to be inordinate delay in any case.

9. Hence the petition is allowed. The impugned order is quashed and set aside. Criminal Misc. Application No.138 of 2006 is allowed and the delay caused in filing the criminal revision application is hereby condoned. The revision be heard and decided on its own merits as expeditiously as possible and in any case before 31st December 2007. Both the sides have given an assurance before this Court that they will co-operate with the learned Addl. Sessions Judge in getting the revision decided within the above stated period. Rule is made absolute accordingly.

10. Writ to go to the trial Court forthwith.

(B.H.MARL